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January 5, 2009

By Hand Delivery

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: **Response of the Service Employees International Union to
the Complaint in Matter Under Review 6124**

Dear Sir or Madam:

The Service Employees International Union ("SEIU") submits this response to the complaint filed with the Federal Election Commission ("FEC") on October 28, 2008 by Karen Glass, Michael R. Casaretto and the National Right to Work Legal Defense and Education Foundation, Inc. (hereinafter "Complaint" or "Compl.").

The Complaint alleges that during its 2008 convention SEIU amended its constitution in a manner which causes contributions to SEIU's federally registered separate segregated fund, Service Employees International Union Committee on Political Education ("SEIU COPE"), to be made "not freely, but out of fear of imposition of a financial penalty," Compl. ¶ 8, in violation of FECA § 316(b)(3)(A) which prohibits separate segregated funds established by corporations and labor organizations from making contributions or expenditures ... utilizing money or anything of value secured by ... financial reprisals, or the threat of ... financial reprisal." 2 U.S.C. § 441b(b)(A)(3).

As amended at the 2008 convention, section 18(a) of Article XV of the SEIU constitution, which is titled "Duties of Local Unions," provides that every domestic local union affiliated with SEIU shall contribute an annual amount equivalent to \$6.00 per member, or as determined annually by the International Executive Board ("IEB"), to support "the overall SEIU political education and action program." This "fundraising obligation" of the local unions may be satisfied by voluntary member contributions to SEIU COPE or by member contributions to another organization designated by the IEB. If a local union fails to meet this fundraising

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obligation, it must contribute its own funds equal to the deficiency plus 50%, or such other amount determined by the IEB, to support the union's political education and action program. For several reasons, the Complaint fails to state any basis for finding reason to believe that the amendment to section 18(a) has violated FECA § 316(b)(A)(3).

The Complaint fails to identify any SEIU member who has been coerced in any manner into contributing to SEIU COPE by reason of the amendment (or otherwise, for that matter.). Complainant Karen Glass is identified as a permanent part-time food service employee who is "a member of the bargaining unit represented by [SEIU] Local 150." Compl. ¶ 1. Ms. Glass does not allege that she has contributed to SEIU COPE or has ever been solicited to contribute. Furthermore, it is reasonable to assume that if Glass knows of union members who have been coerced, or might have been coerced, she would have said so. But the complaint is silent in this regard as well.

The Complaint also alleges that the other individual complainant, Michael R. Casaretto, "has researched the matters set forth in this complaint," Compl. ¶ 2, but it fails to identify any member of SEIU whom Casaretto believes has been coerced into making contributions to COPE as a result of the constitutional amendment or otherwise. As set forth in the Declaration of Robert Hauptman, the 2008 amendment to the SEIU constitution incorporates a long-standing practice adopted by the IEB at least as early as 2000. Notwithstanding the existence of this policy, with a single exception there have been no complaints by SEIU members anywhere concerning alleged coercion by local unions. The exception involved a complaint by several disgruntled former local employees who alleged that they had been coerced into participating in union political activities, including making contributions to SEIU COPE. After interviews with numerous local union employees which included "a series of questions to attempt to determine whether employees were coerced to engage in political activities or contribute to SEIU COPE ...", the Commission dismissed the complaint finding that "there was no evidence of coercion on which to follow up." MUR 5437, General Counsel's Report # 3, at 7 (April 18, 2007).

In addition to the complete absence of allegations of actual coercion, there is no reason to assume that the amended constitutional provision might lead local unions to engage in coercion of member contributions, even assuming that this possibility standing alone would be sufficient to find a violation of FECA § 316(b)(A)(3). The requirement that local unions achieve the level of SEIU COPE support set forth in the constitution is relatively easy to satisfy. Assuming an average annual contribution of \$48.00 per member, only 1/8th of a local's members need contribute to COPE for the union to meet the \$6.00 per member goal. See Hauptman Dec., ¶ 4. Local 150, the bargaining representative where Complainant Glass is employed, has met its fundraising obligation with ease. See, Hauptman Dec., ¶ 5.

While section 18(a) of the constitution encourages SEIU local unions to raise voluntary contributions to SEIU COPE, such fundraising is perfectly legal. The Act and FEC regulations

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allow unions and corporations to encourage contributions to their political action committees. For example, a local union may include a suggested guideline for contributions to its connected pac, and it may include this guideline in its annual dues notices. See 11 CFR § 114.5(a)(2). A union or corporation may also encourage contributions by sponsoring fundraising events, raffles, etc. See 11 CFR § 114.5(b)(2).

Finally, SEIU complies fully with the FEC regulations that have been adopted to ensure the voluntariness of contributions made to union and corporate political action committees. Specifically, SEIU informs its members that they are not required to contribute to COPE as a condition of membership in the union and that members may contribute more or less than any suggested amount. See 11 C.F.R. §§ 114.5(a)(2), (a)(4). Members are further advised that contributions are for political purposes. See 11 C.F.R. § 114.5(a)(3). And, most importantly, they must affirmatively agree to make the contribution. See *Hauptman Dec.*, ¶ 6. Cf. *FEC v. National Education Association*, 457 F. Supp. 1102 (D.D.C. 1978) (prohibiting reverse checkoff procedure). Nothing in the Complaint calls into question these facts which ensure that the fundraising obligation of local unions embodied in the SEIU constitution does not lead to involuntary contributions on the part of any member.

Given the complete dearth of supporting facts, it is unclear how the FEC could begin to investigate the allegations in the Complaint without undertaking a nationwide fishing expedition to find the proverbial needle in a haystack. The Commission should therefore take no action on the Complaint in MUR 6124.

Sincerely,



Michael B. Trister

Attachment

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